REMARKS

This application pertains to a novel packaging material comprising a polystyrene foam base layer (A), together with further layers, one of which is a layer (B) adjacent to the base layer and comprises at least one of the polyolefins of the base layer. The total thickness of the layers A+B is 0.5 to 2 mm, and the thickness of layer B is from 1/6 to 1/2 the thickness of layer A.

Surprisingly, by maintaining the total thickness of the A+B layers with in the claimed range, while maintaining the ratio of their thicknesses within the claimed range, Applicants are able to improve the stiffness of packaging trays without increasing their thickness (page 2, lines 6-14; page 9, lines 21-25).

Claims 1-17 and 19-21 are pending.

Claims 1-17 and 19-21 (i.e., all of the pending claims) stand rejected under 35 U.S.C. 103(a) as obvious over Laurent et al (US 6,132,539).

The Examiner reads Laurent as teaching a laminate wherein the second layer and the first layer are polyolefins which are each based on the same monomer. The Examiner focuses his attention on Col. 1, lines 12-15, wherein Laurent teaches that "Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing the stiffness".... The Examiner also points to Laurent's Fig. 3, which he sees as having a coating film (A), a foam layer (B) and a bonding layer (30). Further, the Examiner refers to the "advantageous thicknesses"

recited by Laurent.

The Examiner acknowledges that Laurent does not include an express teaching of the range of thickness ratio between foam layer (B) and binding layer (30), but contends that "adjusting the thickness ratio between these layers are within the ordinary skill of the art, motivated to provide suitable properties, such as stiffness, to the thermoformed tray".

There is, however, no evidence whatsoever presented that would show that any person skilled in the art would be motivated to "adjust" the thickness ratio of Laurent's foam layer (B) and binding layer (30) to obtain a total thickness of these two layers that was between 0.5 and 2 mm, and a thickness ratio of layer(30) to layer (B) of 1/6 - 1/2.

There is, however, plenty of evidence that no person skilled in the art would even dream of doing this, and, in addition, that this simply could not be done without going contrary to Laurent's teaching.

If the Examiner will once again consider Laurent's Fig. 3, and the individual layers shown there, he will see that Laurent's foam layer (B) has a thickness range of 0.5 - 2 mm.

Layer 30, has a thickness range of 5 to 30 μm. Since one μm = 10^{-3} mm, Laurent's layer 30 has a thickness range of .005 - .030 mm.

At best, therefore, Laurent's ratio of layer (30) to his layer (B), would be only 0.030/0.5 which = 1/17. This is not even close to Applicants' ratio of from 1/6 - 1/2.

Thus, it would be ***impossible*** to arrive at Applicants' film from Laurent's teaching, without radically departing from the totality of Laurent's teaching, and the Examiner has not shown any reason why those skilled in the art would do this.

Regarding the Examiner's reliance on Laurent's beginning statement that "Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing the stiffness...", the Examiner's attention is respectfully drawn to the context within which that statement was made by Laurent. It should not escape the Examiner's attention that Laurnet refers to a "coating ***film***", not a coating layer. At Col 1, lines 31-35, the Examiner will see that the "coating film" referred to by Laurent is actually a multilayer film, and not a single layer, such as Applicants' layer (B) or Laurent's own layer (30). More specifically, said coating film is described as "Usually the coating film carries on its surface facing away from the foam layer a sealing layer which serves as a bonding layer between the packaging material and a transparent film used for closing the packaging item (tray)." This clearly shows that the "coating film" is comprised of a plurality of layers, and is not just a single layer.

In addition, the quoted language pertains to the thickness of the ***coating film only***, and has nothing to do with maintaining a total thickness of the foam layer + the ***layer*** next to it within a specific range, or with maintaining the ratio of the thicknesses of the foamed layer and the one next to it within a particular range.

Therefore, in addition to being devoid of anything that would suggest a particular total thickness, *in combination with* a particular thickness ratio of "A/B" layers, the quoted language does not even refer to two adjacent layers; it refers to a base layer and a film, comprising a plurality of layers, bonded to it.

There is nothing anywhere in Laurent that could even be manipulated or tortured in any way to a form that would approach the invention defined by Applicants claims.

Accordingly, it is simply impossible as a matter of law for Laurent to render Applicants' claims obvious, and the rejection of claims 1-17 and 19-21 under 35 U.S.C. 103(a) as obvious over Laurent (US 6,132,539) should now be withdrawn.

In view of the present amendments and remarks, it is believed that claims 1-17 and 19-21 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested, and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

Additional Fee

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted,
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I hereby certify that this correspondence is being transmitted via facsimile addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 27, 2003

Julie Harting

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Date October 27, 2003